

DIVISION OF LEGAL SERVICES AND COMPLIANCE AGGRAVATING AND MITIGATING FACTORS

AGGRAVATING CIRCUMSTANCES

An aggravating circumstance is any factual information or evidence regarding the respondent or the violation that might result in an increased sanction. Aggravating circumstances include:

- a) Prior disciplinary history
- b) Number of total violations involved in the case
- c) Pattern of similar violations (prior discipline and prior similar discipline)
- d) Significant harm to a (financial or physical) to a patient, institution, a consumer or others
- e) Refusal to correct the error when warranted
- f) Evidence that the violation was willful or intentional
- g) Evidence that the violation was grossly negligent (reckless indifference — in other words, more egregious than an “oops”)
- h) Failure to exercise due diligence in the supervision of others
- i) Refusal to acknowledge violation
- j) Lack of cooperation with investigation
- k) Submission of false statements or evidence, or other deceptive practices (e.g., creating or adding to a record, document file after investigation initiated)
- l) Intimidation of or threats to witnesses or others involved with the investigation

MITIGATING CIRCUMSTANCES

A mitigating circumstance is any information or evidence regarding the respondent or the violation that might result in a decreased recommendation of discipline. Mitigating circumstances include:

- a) Length of time since the date of violation
- b) No prior disciplinary history
- c) No other complaints currently pending against licensee
- d) No pattern of similar offenses
- e) No evidence that the violation was willful or intentional
- f) No evidence that the violation was grossly negligent
- g) License level at the time of violation (length of experience in profession)
- h) Licensee was under the supervision of another professional at the time (e.g., trainees)
- i) Additional education taken and/or experience gained after violation occurred
- j) Cooperation with investigation
- k) Little or no financial or physical harm to patient, client, consumer or others
- l) Timely mitigation or correction of deficiency or loss
- m) Understanding and acknowledgement of violation
- n) Personal problems such as physical, mental or emotional problems or substance abuse at the time of the violation that have since been addressed

